

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

██████████, 2020  
Signature Confirmation

Case # ██████████  
Client ID # ██████████  
Request # 158099

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action indicating that he was approved for continued eligibility for Medicaid under the HUSKY C – Long Term Care (“LTSS”) program and his patient liability amount will be \$898.20 effective ██████████ 2020.

On ██████████ 2020, ██████████, the Community spouse (“CS”) requested an administrative hearing to contest the Department’s determination of the community spousal allowance (“CSA”) amount used to determine the patient liability.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant’s POA and CS  
Paula Wilczynski, Department Representative  
Almelinda McLeod, Hearing Officer

██████████ was not present due to his institutionalization.

The hearing record was held open for the submission of additional evidence. On [REDACTED] 2020 the hearing record was closed.

### **STATEMENT OF THE ISSUE**

The issue is whether or not the Department has correctly calculated the amount of the CSA being diverted to the Appellant's community spouse.

### **FINDINGS OF FACT**

1. On [REDACTED], 2020, the Appellant was admitted into [REDACTED] [REDACTED], a skilled nursing facility ("SNF"). . (Hearing summary & Exhibit 3)
2. The Appellant has a spouse in the community. [REDACTED] is the community spouse ("CS") and became the Appellant's durable power of attorney ("POA") effective [REDACTED] [REDACTED], 2018. (Exhibit 2-court document and Hearing record)
3. The CS lives alone and is independent in all her activities of daily living. (CS testimony)
4. On [REDACTED], 2020, the Department granted the Appellant Husky C Long-Term Care Medicaid assistance effective [REDACTED] 2020, with an applied income of \$898.20 per month effective [REDACTED] 2020. (Exhibit 8, NOA and Exhibit 10-Patient Liability)
5. The Appellant receives Social Security income of \$1514.60 per month and a pension of \$1657.50 per month. The Appellant's total monthly income is \$3172.10. (Hearing summary & Exhibit 4- SOLQ)
6. The Appellant pays \$144.60 for Medicare Part B premium from his Social security check. (Hearing record)
7. The Appellant has secondary health insurance through his credit union pension from which a total of \$340.00 is deducted for both the Appellant in the amount of \$130.00 per month and the CS in the amount of \$210.00 per month. (Hearing record)
8. The Department allowed the Appellant the \$130.00 per month Credit Union secondary health insurance premium. (Exhibit 10, Patient liability)
9. The CS receives Social security income of \$1276.60 per month. (Hearing summary & Exhibit 10- SOLQ)

10. The CS pays a monthly mortgage of \$866.91. (Hearing record)
11. The CS pays a monthly Real Estate tax of \$242.08. (Hearing record)
12. The CS pays home owners insurance at \$92.00 per month. (Hearing record)
13. The Department allowed the CS the Standard Utility Allowance (“SUA”) of \$736.00 in the calculation of the monthly Community Spousal Allowance (“CSA”). (Hearing summary and Exhibit 9 -CSA calculation)
14. The MMNA was capped at \$3216.00. (Exhibit 9 – CSA calculation)
15. The Department awarded the CS a total of \$1939.40. (Hearing summary)
16. The CS would like the Department to consider the \$210.00 premium the Appellant is paying on her behalf for the secondary insurance since it is being deducted from his pension check. (Appellant testimony)
17. In addition, the CS would like the Department to consider the following monthly expenses in the calculation of the CSA:

Medicare part B premium	\$144.60 per month
Car payment	\$311.71 per month
Car Insurance	\$119.00 per month
Electricity	\$ 480.00 per month
Water bill- \$105.98 every 3 months	\$35.33 per month
Garbage - \$98.00 every 3 months	\$32.66 per month
Fire tax bill - \$235.00 per year	\$19.58 per month

\* (Appellant testimony)

18. The Department was not aware of the fire tax bill and is willing to look at the fire tax towards a new CSA amount. (Department testimony)
19. The SUA includes expenses for gas, electric, phone, cable, garbage, and water. (Department testimony)
20. The Department considers the medical expenses for the Appellant only in the determination of the applied income. (Department testimony)
21. The value of the car is an excluded asset for the purposes of processing the CSA. The car payment, car insurance and her Medicare Part B premium for her are not allowable expenses considered to be maintenance of a house in the community. (Department testimony)

22. The issuance of this decision under Connecticut General Statutes 17b-61 (a) which requires that a decision be issued within 90 days of the request for an administrative hearing has been extended to “not later than 120 days “ after a request for a fair hearing pursuant to Section 17b-60 by order of Department of Social Services Commissioner dated [REDACTED] 2020. The Appellant requested an administrative hearing on [REDACTED] 2020; thus this decision is not due until [REDACTED] 2020 and is therefore timely.

### **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
2. Conn. Gen. Stat. §17b-10 provides that the Department’s Uniform Policy Manual (“UPM”) is the equivalent of a state regulation and, as such carries the force of law.”
3. UPM § 5045.20 pertains to assistance units who are residents of Long Term Care Facilities (“LTCF”) or receiving community-based services (“CBS”) is responsible for contributing a portion of their income toward the cost of their care. For LTCF cases only, the amount to be contributed is projected for a six month period.
4. UPM § 5045.20(B) (1) (a) provides that the amount of income to be contributed in LTCF cases at the initial calculation for each month in the six month period for which the contribution is projected, monthly gross income is established as follows: total gross monthly income which was paid or payable to the applicant or recipient, in the six months prior to the period for which the contribution is projected, is divided by six.
5. **The Department correctly determined the Appellant is responsible to pay a portion of his income towards his cost of care.**
6. UPM § 5035.25 provides that residents of long term care facilities (“LTCF”) and those individuals receiving community based services (CBS”) when the individual has a spouse living in the community, total gross income is adjusted by certain deductions to calculate the amount for income which is to be applied to the monthly cost of care.

7. UPM 5035.25 (A) provides that the deductions described below are subtracted from income (1) beginning with the month in which the 30<sup>th</sup> day of continuous LTCF care or the receipt of the community based services occurs; and (2) ending with the month in which the unit member is discharged from the LTCF or community based services are last received.
8. UPM § 5045.20 (B) (1) (b) provides that the total gross income is reduced by post eligibility deductions.
9. UPM § 5035.25(B)(1) provides a monthly deduction for LTFC units of a personal needs allowance ("PNA") of \$50.00, which, effective July 1, 1999, and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration.
10. Conn. Gen. Stat. § 17b-272. (Formerly Sec. 17-134m). Personal fund allowance. Effective July 1, 2011, the Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of sixty dollars.
11. UPM § 5035.25(B)(4) provides a monthly deduction for LTFC units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
- 12. The Department correctly determined the Appellants gross income was \$3172.10. ( \$1514.60 SSA = \$1657.50 pension)**
- 13. The Department correctly allowed a \$60.00 PNA.**
- 14. The Department correctly deducted the Appellant's Medicare part B premium of \$144.60 and his health insurance premiums of \$130.00.**
15. Conn. Gen. Stats. § 17b-261(g) provides that an institutionalized spouse applying for Medicaid and having a spouse living in the community shall be required, to the maximum extent permitted by law, to divert income to such community spouse in order to raise the community spouse's income to the level of the minimum monthly needs allowance, as described in Section 1924 of the Social Security Act. Such diversion of income shall occur before the community spouse is allowed to retain assets in excess of the community spouse protected amount described in Section 1924 of the Social Security Act.

16. UPM § 5035.25(B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross-Reference 5035.30)
17. UPM § 5035.30 (B) (1) (a) (b) provides that the calculation of the CSA is equal to the greater of the following: the difference between the Minimum Monthly Needs Allowance (“MMNA”) and the community spouse gross monthly income; or the amount established pursuant to the court order for the purpose of providing necessary spousal support.
18. UPM § 5035.30 (B) (3) provides that the community spouse’s shelter is equal to the difference between his or her shelter cost as described in section 5035.30 B. 4, and 30% of 150 percent of the monthly poverty level for a unit of two persons.
19. UPM § 5035.30 (B) (4) (a) (b) (c) (d) (e) provides that the community spouse’s monthly shelter cost includes rental cost or mortgage payments, including principal and interest; real estate taxes; real estate insurance; required maintenance fees charged by condominiums or cooperatives except for those amounts for utilities and the Standard Utility Allowance (“SUA”) used in the SNAP program for the community spouse.
20. UPM § 5035.30(B) (5) (a) (b) provides the MMNA may not exceed the greatest of either. The maximum MMNA; or an amount established through a Fair Hearing.
- 21. The Department correctly determined that the CS monthly gross income from Social Security is \$1276.00.**
- 22. The Department correctly determined the CS’s total monthly shelter costs as \$1936.99 (\$866.91 mortgage, \$242.08 property taxes, \$92.00 home owners insurance and \$736.00 standard utility allowance)**
- 23. The Department correctly determined that the CS’s electric, water and garbage expenses are covered under the standard utility allowance.**
- 24. The Department correctly determined that car payments, car insurance and medical insurance payments including Medicare Part B premium expenses are not allowable expenses in the calculation of the CSA amount.**
- 25. The Department correctly determined 150% of the federal poverty level (“FPL”) for two as \$2,113.75 (\$16,910.00, FPL for 2 people/ 12 [months] = \$1,409.16 x 150%)**

26. **The Department correctly determined 30% of 150% of the FPL for two people is \$634.13 (\$2,113.75 x 30%).**
27. **The Department correctly determined the Appellants MMNA is \$3,216.00 (\$1936.99 total shelter cost - \$634.13, 30% of FPL for two people = \$1302.86 excess shelter cost + \$2,113.75, 150% of FPL for two people=\$3416.61. The MMNA is capped at \$3216.00 if the sum of the Appellant's shelter costs and 150% of the FPL exceeds \$3,216.00.**
28. **The Department correctly determined the CSA in the amount of \$1939.40. (\$3216.00 MMNA - \$1276.00 income = \$1939.40)**
29. UPM § 1570.25(D) (3) (a) (1) (2) (3) (b) (1) (2) (3) provides that the Fair Hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing official. Exceptional circumstances are those that are severe and unusual and that: prevent the community spouse from taking care of his or her activities of daily living, or directly threaten the community spouse's ability to remain in the community; or involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relatives (other than an institutionalized spouse). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph an above, and is not already factored into the MMNA, and cannot reasonably be expected to be met by the community spouse's income and assets.
30. UPM § 1570.25(D)(3)(c)(1)(2)(3)(4)(5)(6)(7) provides expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: shelter costs such as rent or mortgage payments; utility costs; condominium fees; real estate and personal property taxes; real estate, life, and medical insurance; expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; medical expenses reflecting the normal frailties of old age.
31. UPM § 1570.25(D)(4) provides that to increase the MMNA, the Fair Hearing official must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her.
32. **The Appellant's living expenses and monthly needs do not fall within the criteria outlined in regulation as "exceptional circumstances". The CS lives alone and is independent in all of her activities of daily living.**

33. The Appellant's monthly applied income is \$898.20 (\$1514.60 SSA, \$1657.50 pension income - \$144.60 Medicare part B premium, \$130.00 Medical Insurance Premium-\$60.00 PNA - \$1939.40 CSA)
34. The Department correctly calculated the applied income as \$898.20 a month.

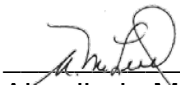
### **DISCUSSION**

Regulations only allow for the hearing process to increase the CSA if the CS can show that she has exceptional circumstances. Exceptional circumstances are those that are severe and unusual and prevent the CS from taking care of her activities of daily living, or directly threaten the community spouse's ability to remain in the community. In this case, the CS lives alone independently and testified that there were no circumstances that prevented the CS from taking care of her activities of daily living. The CS's car payment, car insurance and medical expenses do not fall into the regulatory category of "exceptional circumstances". The CS ability to remain in the community was not directly threatened. Since, there was no financial duress associated with exceptional circumstances; the Appellant was not able to meet the exceptional circumstances threshold in accordance with Departmental policy.

During the hearing, the CS mentioned that she was responsible for a fire tax. The fire tax was not an expense known to the Department at the time the CSA was calculated; however the Department was willing to take a look at it and the Department is encouraged to do so. The Department is upheld.

### **DECISION**

The Appellant's appeal is DENIED.

  
Almelinda McLeod  
Hearing Officer

CC: Rachel Anderson, SSOM New Haven Regional Office  
Cheryl Stuart, SSOM New Haven Regional Office  
Lisa Wells, SSOM New Haven Regional Office  
Paula Wilczynski, Fair Hearing Liaison, New Haven



### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.